

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007

# A Bill

HOUSE BILL 2296

4  
5 By: Representative Pate  
6  
7

## For An Act To Be Entitled

9 AN ACT TO CLARIFY THE APPLICABILITY OF VARIOUS  
10 PROVISIONS OF THE ARKANSAS CODE REGARDING  
11 EXPUNGEMENT AND SEALING OF RECORDS OF CRIMINAL  
12 CONVICTIONS; AND FOR OTHER PURPOSES.  
13

## Subtitle

14 TO CLARIFY THE APPLICABILITY OF VARIOUS  
15 PROVISIONS OF THE ARKANSAS CODE  
16 REGARDING EXPUNGEMENT AND SEALING OF  
17 RECORDS OF CRIMINAL CONVICTIONS.  
18  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Arkansas Code § 5-4-104(d), concerning authorized sentences  
24 for a defendant convicted of an offense other than a Class Y felony, capital  
25 murder, § 5-10-101, treason, § 5-51-201, or murder in the second degree, § 5-  
26 10-103, is amended to read as follows:

27 (d) A defendant convicted of an offense other than a Class Y felony,  
28 capital murder, § 5-10-101, treason, § 5-51-201, or murder in the second  
29 degree, § 5-10-103, may be sentenced to any one (1) or more of the following,  
30 except as precluded by subsection (e) of this section:

- 31 (1) Imprisonment as authorized by §§ 5-4-401 - 5-4-404;
- 32 (2) Probation as authorized by §§ 5-4-301 - ~~5-4-311~~ 5-4-310;
- 33 (3) Payment of a fine as authorized by §§ 5-4-201 - 5-4-203;
- 34 (4) Restitution as authorized by a provision of § 5-4-205; or
- 35 (5) Imprisonment and payment of a fine.  
36



1 SECTION 2. Arkansas Code § 5-4-104(e), concerning offenses for which a  
 2 court may not suspend imposition of sentence as to a term of imprisonment nor  
 3 place the defendant on probation, is amended to read as follows:

4 (e)(1)(A) The court shall not suspend imposition of sentence as to a  
 5 term of imprisonment nor place the defendant on probation for the following  
 6 offenses:

7 (i) Capital murder, § 5-10-101;

8 (ii) Treason, § 5-51-201;

9 (iii) A Class Y felony, except to the extent  
 10 suspension of an additional term of imprisonment is permitted in subsection  
 11 (c) of this section;

12 (iv) Driving while intoxicated, § 5-65-103;

13 (v) Murder in the second degree, § 5-10-103, except  
 14 to the extent suspension of an additional term of imprisonment is permitted  
 15 in subsection (c) of this section; or

16 (vi) Engaging in a continuing criminal enterprise,  
 17 ~~former § 5-64-414~~ 5-64-405.

18 (B)(i) In any other case, the court may suspend imposition  
 19 of sentence or place the defendant on probation, in accordance with §§ 5-4-  
 20 301 - ~~5-4-311~~ 5-4-310, except as otherwise specifically prohibited by  
 21 statute.

22 (ii) The court may not suspend execution of  
 23 sentence.

24 (2) If the offense is punishable by fine and imprisonment, the  
 25 court may sentence the defendant to pay a fine and suspend imposition of the  
 26 sentence as to imprisonment or place the defendant on probation.

27 (3)(A) The court may sentence the defendant to a term of  
 28 imprisonment and suspend imposition of sentence as to an additional term of  
 29 imprisonment.

30 (B) However, the court shall not sentence a defendant to  
 31 imprisonment and place him or her on probation, except as authorized by § 5-  
 32 4-304.

33  
 34 SECTION 3. Arkansas Code Title 5, Chapter 4, Subchapter 1 is amended  
 35 to add an additional section to read as follows:

36 5-4-105. Expungement and sealing options.

1       (a) An expungement or sealing of the records of a criminal prosecution  
 2 in which a plea of guilty or nolo contendere has been entered or in which a  
 3 defendant was found guilty at trial is governed by the following provisions  
 4 of law:

5               (1) If no judgment of guilt is entered as a consequence of a  
 6 plea of guilty or nolo contendere, eligibility for an expungement or a  
 7 sealing of the records of the criminal prosecution is governed by §§ 16-93-  
 8 301 - 16-93-303; and

9               (2) If a judgment of guilt is entered as a consequence of a plea  
 10 of guilty or nolo contendere or after a finding of guilt by a judge or a  
 11 jury, eligibility for an expungement or a sealing of the records of the  
 12 criminal prosecution is governed by § 16-93-1201 et seq.

13       (b) Eligibility for an expungement or a sealing of the records of a  
 14 criminal prosecution that was terminated by an acquittal, dismissal, or nolle  
 15 prosequi is governed by § 16-90-906.

16       (c) The procedure for an expungement or a sealing of the records of a  
 17 criminal prosecution is governed by § 16-90-901 et seq.

18  
 19       SECTION 4. Arkansas Code § 5-4-311 is repealed.

20       ~~5-4-311. Discharge and dismissal.~~

21       ~~(a) If a judgment of conviction was not entered by the court at the~~  
 22 ~~time of suspension or probation and the defendant fully complies with the~~  
 23 ~~conditions of suspension or probation for the period of suspension or~~  
 24 ~~probation, the court shall discharge the defendant and dismiss any~~  
 25 ~~proceedings against him or her.~~

26       ~~(b)(1) Subject to the provisions of §§ 5-4-501—5-4-504, a person~~  
 27 ~~against whom proceedings are discharged or dismissed under subsection (a) of~~  
 28 ~~this section may seek to have the criminal record sealed, consistent with the~~  
 29 ~~procedures established in § 16-90-901 et seq.~~

30       ~~(2) This subsection does not apply if:~~

31               ~~(A) The person applying for discharge has been convicted~~  
 32 ~~of a sexual offense as defined by § 5-14-101 et seq.; and~~

33               ~~(B) The victim was under eighteen (18) years of age.~~

34  
 35       SECTION 5. Arkansas Code § 5-10-101(c), concerning punishment for  
 36 capital murder, is amended to read as follows:

1 (c)(1) Capital murder is punishable by death or life imprisonment  
 2 without parole pursuant to §§ 5-4-601 - 5-4-605, 5-4-607, and 5-4-608.

3 (2) For any purpose other than disposition under §§ 5-4-101 - 5-  
 4 4-104, 5-4-201 - 5-4-204, 5-4-301 - 5-4-308, 5-4-310, ~~5-4-311~~, 5-4-401 - 5-4-  
 5 404, 5-4-501 - 5-4-504, 5-4-601 - 5-4-605, 5-4-607, and 5-4-608, capital  
 6 murder is a Class Y felony.

7  
 8 SECTION 6. Arkansas Code § 5-51-201 is amended to read as follows:  
 9 5-51-201. Treason.

10 (a) Treason against the state shall consist only in:

- 11 (1) Levying war against the state; or
- 12 (2) Adhering to the state's enemies, giving them aid and  
 13 comfort.

14 (b) No person shall be convicted of treason unless on:

- 15 (1) The testimony of two (2) witnesses to the same overt act; or
- 16 (2) The person's own confession in open court.

17 (c) Treason is punishable by death or life imprisonment without parole  
 18 pursuant to §§ 5-4-601 - 5-4-605, 5-4-607, and 5-4-608.

19 (d) For all purposes other than disposition under §§ 5-4-101 - 5-4-  
 20 104, 5-4-201 - 5-4-204, 5-4-301 - 5-4-309, ~~5-4-311~~, 5-4-401 - 5-4-404, 5-4-  
 21 501 - 5-4-504, 5-4-601 - 5-4-605, 5-4-607, and 5-4-608, treason is a Class A  
 22 felony.

23  
 24 SECTION 7. Arkansas Code § 5-64-413 is repealed.

25 ~~5-64-413. Probation—Discharge and dismissal.~~

26 ~~(a) When any person who has not previously pleaded guilty or been~~  
 27 ~~found guilty of any offense under this chapter or under any statute of the~~  
 28 ~~United States or of any state relating to a narcotic drug, marijuana,~~  
 29 ~~stimulant, depressant, or a hallucinogenic drug pleads guilty to or is found~~  
 30 ~~guilty of possession of a controlled substance under § 5-64-401, with the~~  
 31 ~~exception of a conviction for possession of a substance listed under Schedule~~  
 32 ~~I, the court without entering a judgment of guilt and with the consent of the~~  
 33 ~~defendant may defer further proceedings and place the defendant on probation~~  
 34 ~~for a period of not less than one (1) year under such terms and conditions as~~  
 35 ~~may be set by the court.~~

36 ~~(b) The court may require as a condition for probation that the~~

1 ~~defendant undergo an evaluative examination by a physician or medical~~  
 2 ~~facility approved by the court and, if warranted, undergo in-patient or out-~~  
 3 ~~patient treatment and rehabilitation for drug abuse.~~

4 ~~(c) Upon violation of a term or condition, the court may enter an~~  
 5 ~~adjudication of guilt and proceed as otherwise provided.~~

6 ~~(d)(1) Upon fulfillment of the terms and conditions, the court shall~~  
 7 ~~discharge the person and dismiss the proceedings against him or her.~~

8 ~~(2) Discharge and dismissal under this section shall be without~~  
 9 ~~adjudication of guilt and is not a conviction for purposes of this section or~~  
 10 ~~for purposes of disqualifications or disabilities imposed by law upon~~  
 11 ~~conviction of a crime, including the additional penalties imposed for a~~  
 12 ~~second or subsequent conviction under § 5-64-408.~~

13 ~~(3) There may be only one (1) discharge and dismissal under this~~  
 14 ~~section with respect to any person.~~

15 ~~(4) A person against whom proceedings are discharged or~~  
 16 ~~dismissed may seek to have the criminal records sealed, consistent with the~~  
 17 ~~procedures established in § 16-90-901 et seq.~~

18  
 19 SECTION 8. Arkansas Code § 16-90-901 is amended to read as follows:  
 20 16-90-901. Definition.

21 (a)(1) As used in §§ 5-64-407, ~~5-4-311~~, 16-90-601, 16-90-602, 16-90-  
 22 605, 16-93-301 - 16-93-303, and 16-93-1207, "expunge" shall mean that the  
 23 record or records in question shall be sealed, sequestered, and treated as  
 24 confidential in accordance with the procedures established by this  
 25 subchapter.

26 (2) Unless otherwise provided by this subchapter, "expunge"  
 27 shall not mean the physical destruction of any records.

28 (3) No person who is found guilty of or pleads guilty or nolo  
 29 contendere to a sexual offense as defined in this section and in which the  
 30 victim was under the age of eighteen (18) years shall be eligible to have the  
 31 offense expunged under the procedures set forth in this subchapter.

32 (b) For purposes of this subchapter, "sexual offense" shall be defined  
 33 as conduct prohibited by § 5-14-101 et seq., §§ 5-26-202, 5-27-602, 5-27-603,  
 34 5-27-605, 16-93-303(a)(1)(B), and any other subsequently enacted criminal law  
 35 prohibiting sexual conduct with a child.

1 SECTION 9. Arkansas Code § 16-93-303 is amended to read as follows:  
 2 16-93-303. Procedure.

3 (a)(1)(A)(i) Whenever an accused enters a plea of guilty or nolo  
 4 contendere prior to an adjudication of guilt, the judge of the circuit or  
 5 district court, in the case of a defendant who has not been previously  
 6 convicted of a felony, without making a finding of guilt or entering a  
 7 judgment of guilt and with the consent of the defendant may defer further  
 8 proceedings and place the defendant on probation for a period of not less  
 9 than one (1) year, under such terms and conditions as may be set by the  
 10 court.

11 (ii) A sentence of a fine or an assessment of court  
 12 costs against a defendant does not negate the benefits provided by this  
 13 section or cause the probation placed on the defendant under this section to  
 14 constitute a conviction except under subsections (c), (d), and (e) of this  
 15 section.

16 (B) However, no person who is found guilty of or pleads  
 17 guilty or nolo contendere to a sexual offense as defined by § 5-14-101 et  
 18 seq. and §§ 5-26-202, 5-27-602, 5-27-603, and 5-27-605 in which the victim  
 19 was under eighteen (18) years of age shall be eligible for expungement of the  
 20 record under this subchapter.

21 (2) Upon violation of a term or condition, the court may enter  
 22 an adjudication of guilt and proceed as otherwise provided.

23 (3) Nothing in this subsection shall require or compel any court  
 24 of this state to establish first offender procedures as provided in §§ 16-93-  
 25 301 - 16-93-303, nor shall any defendant be availed the benefit of §§ 16-93-  
 26 301 - 16-93-303 as a matter of right.

27 (b) Upon fulfillment of the terms and conditions of probation or upon  
 28 release by the court prior to the termination period thereof, the defendant  
 29 shall be discharged without court adjudication of guilt, whereupon the court  
 30 shall enter an appropriate order which shall effectively dismiss the case,  
 31 discharge the defendant, and expunge the record, if consistent with the  
 32 procedures established in § 16-90-901 et seq.

33 (c) During the period of probation described in subdivision  
 34 (a)(1)(A)(i) of this section, a defendant is considered as not having a  
 35 felony conviction except for:

36 (1) Application of any law prohibiting possession of a firearm

1 by certain persons;

2 (2) A determination of habitual offender status;

3 (3) A determination of habitual offender criminal history;

4 (4) Sentencing as a habitual offender; and

5 (5) A purpose of impeachment as a witness under Rule 609 of the  
 6 Arkansas Rules of Evidence.

7 (d) After successful completion of probation placed on the defendant  
 8 under this section, a defendant is considered as not having a felony  
 9 conviction except for:

10 (1) A determination of habitual offender status;

11 (2) A determination of habitual offender criminal history;

12 (3) Sentencing as a habitual offender; and

13 (4) A purpose of impeachment as a witness under Rule 609 of the  
 14 Arkansas Rules of Evidence.

15 (e) The eligibility to possess a firearm of a person whose record has  
 16 been expunged and sealed under this subchapter and § 16-90-901 et seq. is  
 17 governed by § 5-73-103.

18  
 19 SECTION 10. Arkansas Code § 16-93-1202(10), concerning the definition  
 20 of target group, is amended to read as follows:

21 (10)(A)(i) "Target group" means a group of offenders and  
 22 offenses determined to be, but not limited to, theft, theft by receiving, hot  
 23 checks, residential burglary, commercial burglary, failure to appear,  
 24 fraudulent use of credit cards, criminal mischief, breaking or entering, drug  
 25 paraphernalia, driving while intoxicated, fourth or subsequent offense, all  
 26 other Class C or Class D felonies which are not either violent or sexual and  
 27 which meet the eligibility criteria determined by the General Assembly to  
 28 have significant impact on the use of correctional resources, Class A and  
 29 Class B controlled substance felonies, and all other unclassified felonies  
 30 for which the prescribed limitations on a sentence do not exceed the  
 31 prescribed limitations for a Class C felony and that are not either violent  
 32 or sexual.

33 (ii) Offenders committing solicitation, attempt, or  
 34 conspiracy of the substantive offenses listed ~~above~~ in subdivision (10)(A)(i)  
 35 of this section are also included in the group.

36 (iii) For the purposes of this ~~subsection~~

1 subdivision, "violent or sexual" includes all offenses against the person  
 2 codified in § 5-10-101 et seq., § 5-11-101 et seq., § 5-12-101 et seq., § 5-  
 3 13-201 et seq., § 5-13-301 et seq., and § 5-14-101 et seq., and any offense  
 4 containing as an element of the offense the use of physical force, the  
 5 threatened use of serious physical force, the infliction of physical harm, or  
 6 the creation of a substantial risk of serious physical harm.

7 (iv) For the purpose of an expungement or a sealing  
 8 of a record under § 16-93-1207, "target group" includes any misdemeanor  
 9 conviction except a misdemeanor conviction for which the offender is required  
 10 to register as a sex offender.

11  
 12 SECTION 11. Arkansas Code § 16-93-1206(b), concerning sentencing  
 13 alternatives available upon determination by a court that an offender is an  
 14 eligible offender and that placement in a community correction program is  
 15 proper, is amended to read as follows:

16 (b) Upon determination by the court that the offender is an eligible  
 17 offender and that placement in a community correction program is proper, the  
 18 court may utilize the following methods of placement:

19 (1)(A) Suspend the imposition of the sentence or place the  
 20 offender on probation, pursuant to § 5-4-104, § 5-4-201 et seq., and §§ 5-4-  
 21 301 - ~~5-4-311~~ 5-4-310.

22 (B) This sentence may be accompanied by assignment to a  
 23 community correction program for a designated period of time commensurate  
 24 with the goals of the program assignment and the rules and regulations  
 25 established by the Board of Corrections for the operation of community  
 26 correction programs.

27 (C) The trial court shall maintain jurisdiction over the  
 28 eligible offender sentenced in this manner with supervision outside the  
 29 confines of the specific programming provided by probation officers assigned  
 30 to the court;

31 (2)(A) In the event a person sentenced under subdivision (b)(1)  
 32 of this section violates any terms or conditions of his or her sentence or  
 33 term of probation, revocation of the sentence or term of probation shall be  
 34 consistent with the procedures established by law for the revocation of  
 35 suspended imposition of sentence or probation.

36 (B) Upon revocation, the court of jurisdiction shall



1 determine whether the offender shall remain under the jurisdiction of the  
 2 court and be assigned to a more restrictive community correction program,  
 3 facility, or institution for a period of time or committed to the Department  
 4 of Community Correction.

5 (C) If committed to the Department of Correction, the  
 6 court shall specify if the commitment is for judicial transfer of the  
 7 offender to the Department of Community Correction or is a regular  
 8 commitment; and

9 (3)(A) Commit the eligible offender to the custody of the  
 10 Department of Correction pursuant to this subchapter for judicial transfer to  
 11 the Department of Community Correction subject to the following:

12 (i) That the sentence imposed provides that the  
 13 offender shall serve no more than two (2) years of confinement, with credit  
 14 for meritorious good time, with initial placement in a Department of  
 15 Community Correction facility; and

16 (ii) That the initial placement in the Department of  
 17 Community Correction is conditioned upon the offender's continuing  
 18 eligibility for Department of Community Correction placement and the  
 19 offender's compliance with all applicable rules and regulations established  
 20 by the board for community correction programs.

21 (B) Post-prison supervision shall accompany and follow  
 22 programming when appropriate.

23

24 SECTION 12. Arkansas Code § 16-93-1207 is amended to read as follows:  
 25 16-93-1207. Order of court.

26 (a) Upon the sentencing or placing on probation of any person under  
 27 the provisions of this subchapter, the sentencing court shall issue an order  
 28 or commitment, whichever is appropriate, in writing, setting forth the  
 29 following:

30 (1) That the offender is being:

31 (A) Committed to the Department of Correction;

32 (B) Committed to the Department of Correction with  
 33 judicial transfer to the Department of Community Correction;

34 (C) Placed on suspended imposition of sentence; ~~or~~

35 (D) Placed on probation under the provisions of this  
 36 subchapter; or

1                   (E) Committed to a county jail for a misdemeanor;

2                   (2) That the offender has knowledge and understanding of the  
3 consequences of the sentence or placement on probation and violations  
4 thereof;

5                   (3) A designation of sentence or supervision length along with  
6 community correction program distinctions of that sentence or supervision  
7 length;

8                   (4) Any applicable terms and conditions of the sentence or  
9 probation term; and

10                  (5) Presentence investigation or sentencing information,  
11 including, but not limited to, criminal history elements and other  
12 appropriate or necessary information for correctional use.

13                  (b)(1) Upon the successful completion of probation or a commitment to  
14 the Department of Correction with judicial transfer to the Department of  
15 Community Correction or a commitment to a county jail for one (1) of the  
16 offenses targeted by the General Assembly for community correction placement,  
17 the court may direct that the record of the offender be expunged of the  
18 offense of which the offender was either convicted or placed on probation  
19 under the condition that the offender has no more than one (1) previous  
20 felony conviction and that the previous felony was other than a conviction  
21 for:

- 22                   (A) A capital offense;
- 23                   (B) Murder in the first degree, § 5-10-102;
- 24                   (C) Murder in the second degree, § 5-10-103;
- 25                   (D) First degree rape, § 5-14-103;
- 26                   (E) Kidnapping, § 5-11-102;
- 27                   (F) Aggravated robbery, § 5-12-103; or
- 28                   (G) Delivering controlled substances to a minor as  
29 prohibited in § ~~5-64-701(a)(2) [repealed]~~ 5-64-410.

30                  (2) The fact that a prior felony conviction has been previously  
31 expunged shall not prevent its counting as a prior conviction for the  
32 purposes of this subsection.

33                  (3) The procedure, effect, and definition of "expungement" for  
34 the purposes of this subsection shall be in accordance with that established  
35 in § 16-90-901 et seq.

36

SECTION 13. Arkansas Code § 27-23-128 is amended to read as follows:  
27-23-128. Deferment of sentence - Restrictions.

No circuit or district court judge may utilize the provisions of §§ ~~5-4-311~~, 5-4-321, 16-90-115, or 16-93-301 - 16-93-303 or any other program to defer imposition of sentence in instances in which the defendant holds a commercial driver license and is charged with violating any state or local traffic law other than a parking violation.

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